

40204A



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dwayne Yount et al.

Serial No.: 09/853,043

Filed: May 11, 2001

For: A SYSTEM AND METHOD FOR PROVIDING  
IMPROVED EVENT READING AND DATA  
PROCESSING CAPABILITIES IN A FLOW  
CYTOMETER

PATENT  
TECHNOLOGY CENTER 2800  
RECEIVED  
NOV -4 2002

Group Art Unit: 2878

Examiner:  
Seung C. Sohn

#9/Electro  
JMN  
11-6-02

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicants hereby respond to the Office Action dated October 3, 2002. Because this response is being filed within the shortened statutory period set by the Examiner, no extension fee is believed to be due at this time. However, should any fee be deemed necessary, Applicants' hereby authorize any such fee to be charged to Deposit Account No. 18-2220.

In the Office Action, the Examiner has required restriction under 35 U.S.C. §121 to one of the following inventions: Species (I) Claims 1-10 and 18-27; and Species (II) claims 11-17 and 28-34. This requirement is respectively traversed.

There is a significant degree of common subject matter in both inventions identified in the Office Action. All of the claims are directed to systems and methods involving flow cytometers. Because of this common subject matter, the Applicants believe that it will not be a serious burden on the Examiner to search and examine all of the claims. Under MPEP §803, "[i]f the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the

merits, *even though* it includes claims to independent or distinct inventions" (emphasis added). In the Applicants' view, that is exactly the situation in the present case.

Should the Examiner disagree with the Applicants' position in this matter, the Applicants provisionally elect Species I (claims 1-10 and 16-28) for further prosecution in this application. <sup>18-27</sup>

Respectfully submitted,



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